

PART 808—HEARINGS AND ENFORCEMENT ACTIONS

Subpart A—Conduct of Hearings

Sec.

- 808.1 Public hearings.
- 808.2 Administrative appeals.
- 808.3 Hearings on administrative appeal.
- 808.4 Optional joint hearing.

Subpart B—Compliance and Enforcement

- 808.10 Scope of subpart.
- 808.11 Duty to comply.
- 808.12 Investigative powers.
- 808.13 Notice of violation.
- 808.14 Orders.
- 808.15 Show cause proceeding.
- 808.16 Civil penalty criteria.
- 808.17 Enforcement of penalties, abatement or remedial orders.
- 808.18 Settlement by agreement.
- 808.19 Effective date.

AUTHORITY: Secs. 3.4 (9), 3.5 (5), 3.8, 3.10 and 15.2, Pub. L. 91–575, 84 Stat. 1509 *et seq.*

SOURCE: 71 FR 78589, Dec. 29, 2006, unless otherwise noted.

Subpart A—Conduct of Hearings

§ 808.1 Public hearings.

(a) A public hearing shall be conducted in the following instances:

(1) Addition of projects or adoption of amendments to the comprehensive plan, except as otherwise provided by Section 14.1 of the compact.

(2) Proposed rulemaking.

(3) Consideration of projects, except projects approved pursuant to memoranda of understanding with member jurisdictions.

(4) Hearing requested by a member jurisdiction.

(5) As otherwise required by the compact or Commission regulations.

(b) A public hearing may be conducted by the Commission in any form or style chosen by the Commission when in the opinion of the Commission, a hearing is either appropriate or necessary to give adequate consideration to issues relating to public health, safety and welfare, or protection of the environment, or to gather additional information for the record or consider new information, or to decide factual disputes in connection with matters pending before the Commission.

(c) Notice of public hearing. At least 20 days before any public hearing required by the compact, notices stating the date, time, place and purpose of the hearing including issues of interest to the Commission shall be published at least once in a newspaper of general circulation in the area affected. Occasions when public hearings are required by the compact include, but are not limited to, amendments to the comprehensive plan, drought emergency declarations, and review and approval of diversions. In all other cases, at least 10 days prior to the hearing, notice shall be posted at the office of the Commission (or on the Commission Web site), mailed by first class mail to the parties who, to the Commission's knowledge, will participate in the hearing, and mailed by first class mail to persons, organizations and news media who have made requests to the Commission for notices of hearings or of a particular hearing. With regard to rulemaking, the Commission shall convene at least one public hearing on any proposed rulemaking it approves for public review and comment. For any such hearing(s), notices need only be forwarded to the directors of the New York Register, the Pennsylvania bulletin, the Maryland Register and the FEDERAL REGISTER, and it is sufficient that this notice appear only in the FEDERAL REGISTER at least 20 days prior to the hearing and in each individual state publication at least 10 days prior to any hearing scheduled in that state.

(d) *Standard public hearing procedure.* (1) Hearings shall be open to the public. Participants to a public hearing shall be the project sponsor and the Commission staff. Participants may also be any person wishing to appear at the hearing and make an oral or written statement. Statements may favor or oppose the project/proposal, or may simply express a position without specifically favoring or opposing the project/proposal. Statements shall be made a part of the record of the hearing, and written statements may be received up to and including the last day on which the hearing is held, or within a reasonable time thereafter as may be specified by the presiding officer, which time shall be not less than 10

days nor more than 30 days, except that a longer time may be specified if requested by a participant.

(2) Participants (except the project sponsor and the Commission staff) are encouraged to file with the Commission at its headquarters written notice of their intention to appear at the hearing. The notice should be filed at least three days prior to the opening of the hearing.

(e) *Representative capacity.* Participants wishing to be heard at a public hearing may appear in person or be represented by an attorney or other representative. A governmental authority may be represented by one of its officers, employees or by a designee of the governmental authority. Any individual intending to appear before the Commission in a representative capacity on behalf of a participant shall give the Commission written notice of the nature and extent of his/her authorization to represent the person on whose behalf he/she intends to appear.

(f) *Description of project.* When notice of a public hearing is issued, there shall be available for inspection at the Commission offices all plans, summaries, maps, statements, orders or other supporting documents which explain, detail, amplify, or otherwise describe the project the Commission is considering. Instructions on where and how the documents may be obtained will be included in the notice.

(g) *Presiding officer.* A public hearing shall be presided over by the Commission chair, the Executive Director, or any member or designee of the Commission. The presiding officer shall have full authority to control the conduct of the hearing and make a record of the same.

(h) *Transcript.* Whenever a project involving a diversion of water is the subject of a public hearing, and at all other times deemed necessary by the Commission or the Executive Director, a written transcript of the hearing shall be made. Other public hearings may be electronically recorded and a transcript made only if deemed necessary by the Executive Director or general counsel. A certified copy of the transcript and exhibits shall be available for review during business hours at the Commission's headquarters to

anyone wishing to examine them. Persons wishing to obtain a copy of the transcript of any hearing shall make arrangements to obtain it directly from the recording stenographer at their expense.

(i) The Commission may conduct any public hearings in concert with any other agency of a member jurisdiction.

[71 FR 78589, Dec. 29, 2006, as amended at 74 FR 49813, Sept. 29, 2009]

§ 808.2 Administrative appeals.

(a) A project sponsor or other person aggrieved by a final action or decision of the Commission or Executive Director on a project application or a records access determination made pursuant to Commission policy may file a written appeal requesting a hearing. In the case of a project approval or denial, such appeal shall be filed by a project sponsor within 30 days of receipt of actual notice, and by all others within 30 days of publication of notice of the action taken on the project in the FEDERAL REGISTER. In the case of records access determinations, such appeal shall be filed with the Commission within 30 days of receipt of actual notice of the determination. Appeals filed later than 20 days prior to a regular Commission meeting will be considered at a subsequent Commission meeting. Appeals shall be filed on a form and in a manner prescribed by the Commission and the petitioner shall have 20 days from the date of filing to amend the appeal form.

(b) The appeal shall identify the specific action or decision for which a hearing is requested, the date of the action or decision, the interest of the person requesting the hearing in the subject matter of the appeal, and a statement setting forth the basis for objecting to or seeking review of the action or decision.

(c) Any request not filed on or before the applicable deadline established in paragraph (a) of this section hereof will be deemed untimely and such request for a hearing shall be considered denied unless the Commission, upon written request and for good cause shown, grants leave to make such filing *nunc pro tunc*; the standard applicable to what constitutes good cause shown